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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROHAN ANTHONY COOMBS,

Petitioner,

vs.

JANET NAPOLITANO, Secretary of the Department of Homeland Security; ERIC HOLDER, JR., Attorney General; ROBIN BARKER; JOHN A. GARZON, Field Office Director, U.S. Immigration and Custom Enforcement; and JOHNNY WILLIAMS, Officer in Charge,

Respondents.

CASE NO. 11-cv-2201 – BEN (BGS)

ORDER:

(1) DISMISSING PETITION IN PART AS MOOT AND IN PART WITHOUT PREJUDICE; and

(2) DENYING AS MOOT MOTION TO APPOINT COUNSEL.

Petitioner Rohan Anthony Coombs filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 (“Petition”), alleging that he was being detained by the Department of Homeland Security (“DHS”) without a bond hearing pending removal and seeking release from custody. Coombs, however, has already received a bond hearing. Liberally read, the Petition also alleges due process violations during the bond hearing. Respondents filed a return to the Petition, contending that the Petition should be dismissed as moot because Coombs was already granted a bond hearing. Respondents also assert that the Petition should be dismissed for failure to exhaust administrative remedies. Coombs filed a traverse. For the reasons set forth below, the Court **DISMISSES** the

1 Petition **AS MOOT** to the extent Coombs seeks a bond hearing. However, to the extent Coombs
 2 alleges due process violations during the bond hearing, the Court **DISMISSES** that portion of the
 3 Petition **WITHOUT PREJUDICE** for failure to exhaust administrative remedies.

4 **BACKGROUND**

5 Coombs, a native and citizen of Jamaica, immigrated to the United States as a lawful
 6 permanent resident in 1981. From 1987 until 1991, Coombs served in the United States Marine Corps,
 7 which included active combat in Kuwait. In 1991, following an honorable discharge, Coombs
 8 reenlisted in the Marine Corps. In 1993, Coombs was dishonorably discharged after pleading guilty
 9 to wrongfully possessing drug paraphernalia, possession of cocaine and marijuana with intent to
 10 distribute, wrongfully fleeing a Staff Sergeant, and wrongfully distributing cocaine and marijuana.
 11 Since then, Coombs has been convicted on three separate occasions (2006, 2007, and 2008) of, among
 12 other things, possession of a controlled substance (marijuana) for the purpose of sale. The 2007 and
 13 2008 crimes occurred while Coombs was on probation.

14 Some time in 2008, Coombs came to the attention of Immigration and Customs Enforcement
 15 (“ICE”), an investigative branch of the DHS. On July 25, 2008, ICE initiated removal proceedings
 16 against Coombs, charging him with being removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), as an
 17 alien convicted of an aggravated felony, and 8 U.S.C. § 1227(a)(2)(B)(I), as an alien convicted of a
 18 controlled substance offense. Due to his criminal convictions, Coombs was mandatorily detained
 19 under 8 U.S.C. § 1226(c) during his administrative removal proceedings. On several occasions,
 20 Coombs requested a redetermination of this custody decision, but all of those requests were denied.

21 On March 11, 2010, at the conclusion of the merits hearing, an immigration judge (“IJ”) denied
 22 Coombs’ motion to terminate removal proceedings and found Coombs removable as charged. The
 23 IJ ordered Coombs’ removal from the United States to Jamaica. Coombs appealed the IJ’s decision
 24 to the Board of Immigration Appeals (“BIA”). On August 31, 2010, the BIA dismissed Coombs’
 25 appeal. On September 23, 2010, Coombs filed a petition for review with the Ninth Circuit, which is
 26 still pending. Coombs sought a stay of removal, which the government did not oppose. On February
 27 23, 2011, the Ninth Circuit granted a stay of removal pending judicial review of the removal order.

28 On June 6, 2011, the same IJ that presided over Coombs’ removal proceedings granted

1 Coombs' request for bond redetermination pursuant to *Casas-Castrillon v. D.H.S.*, 535 F.3d 942 (9th
 2 Cir. 2008), and *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008). On July 11, 2011, the IJ
 3 issued an order denying bond. In a written decision, the IJ found that the government met its burden
 4 of showing, by clear and convincing evidence, that Coombs was a flight risk and a danger to the
 5 community. On September 21, 2011, Coombs filed the instant Petition. On October 27, 2011,
 6 Coombs filed an appeal from the IJ's order denying bond. On November 30, 2011, the BIA dismissed
 7 the appeal as untimely. (Pet.'s Traverse, Ex. F [Doc. No. 10-1].)

8 In response to the Court's Order to Show Cause, Respondents filed a return to the Petition,
 9 contending that the Petition should be dismissed as moot because Coombs was already granted a bond
 10 hearing. Respondents also assert that the Petition should be dismissed because Coombs failed to
 11 exhaust his administrative remedies. Coombs filed a traverse.

12 DISCUSSION

13 I. Statutory authority for detention

14 The initial question for the Court is pursuant to which statutory authority Coombs is being
 15 presently detained. When Coombs was initially taken into INS custody, he was subject to mandatory
 16 detention pursuant to § 1226(c) as a result of his prior convictions. *See* 8 U.S.C. § 1226(c)(1)(B)
 17 ("The Attorney General *shall* take into custody any alien who . . . is deportable by reason of having
 18 committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), . . . of this title." (emphasis
 19 added)). The Attorney General may release an alien detained under § 1226(c) only for narrow reasons
 20 not implicated here. *See* 8 U.S.C. § 1226(c)(2).

21 After the BIA affirmed Coombs' order of removal and the Ninth Circuit issued a stay of
 22 removal, however, the Attorney General's authority to detain Coombs changed. As the Ninth Circuit
 23 explained in *Prieto-Romero* and *Casas-Castrillon*, once an alien's order of removal becomes
 24 administratively final and the court of appeals enters a stay of removal, the authority to detain the alien
 25 shifts from § 1226(c) to § 1226(a), which allows the Attorney General to detain any alien "pending
 26 a decision on whether the alien is to be removed from the United States." *See Casas-Castrillon*, 535
 27 F.3d at 948; *Prieto-Romero*, 534 F.3d at 1059. An alien held under § 1226(a) is entitled to a bond
 28 hearing before an IJ. *See Casas-Castrillon*, 535 F.3d at 951.

1 **II. Bond hearing**

2 Section 1226(a) provides the authority for the Attorney General to conduct a bond hearing and
 3 release an alien on bond or detain him if necessary to secure his presence at removal. *See Casas-*
 4 *Castrillon*, 535 F.3d at 951. It does not, however, authorize prolonged or indefinite detention without
 5 adequate procedural protections. *See id.* at 950–51. “Because the prolonged detention of an alien
 6 without an individualized determination of his dangerousness or flight risk would be ‘constitutionally
 7 doubtful,’ [the Ninth Circuit] h[e]ld that § 1226(a) must be construed as *requiring* the Attorney
 8 General to provide the alien with [a bond] hearing.” *Id.* at 951 (citation omitted). Accordingly, an
 9 alien is entitled to release on bond unless the government establishes “by clear and convincing
 10 evidence that an alien is a flight risk or a danger to the community.” *Singh v. Holder*, 638 F.3d 1196,
 11 1203 (9th Cir. 2011). Notably, “an opportunity to contest the necessity of his detention before a
 12 neutral decisionmaker and an opportunity to appeal that determination to the BIA” is the sole remedy
 13 available to a habeas petitioner in Coombs’ situation. *See Prieto-Romero*, 534 F.3d at 1065–66; *see also* 8 U.S.C. § 1226(a); *Casas-Castrillon*, 535 F.3d at 949.

15 In this case, Coombs already had “an opportunity to contest the necessity of his detention
 16 before a neutral decisionmaker and an opportunity to appeal that determination to the BIA.” *See*
 17 *Prieto-Romero*, 534 F.3d at 1065–66. Specifically, on June 6, 2011, the IJ granted Coombs’ request
 18 for bond redetermination pursuant to *Casas-Castrillon* and *Prieto-Romero*. On July 11, 2011, the IJ
 19 issued an order denying bond. (*See* Resp’ts’ Return to Pet., Ex. H [Doc. No. 8-1].) Coombs also had
 20 an opportunity to appeal that determination the BIA.

21 Accordingly, to the extent Coombs seeks release from custody or a bond hearing before a
 22 neutral decisionmaker, the Court **DISMISSES** the Petition **AS MOOT** because the bond hearing
 23 provided Coombs with the sole remedy to which he was entitled.¹

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25 ¹ The Court rejects Coombs’ contention that the IJ who presided over his bond redetermination
 26 hearing was not an “independent adjudicator” because he also presided over Coombs’ removal
 27 proceedings. *Joseph v. Holder*, 600 F.3d 1235 (9th Cir. 2010), on which Coombs relies, is inapposite.
 28 In *Joseph*, the Ninth Circuit concluded that it was impermissible for the IJ to consider her own notes
 from the bond hearing in determining the applicant’s credibility at the removal hearing. *Id.* at 1241–43.
 The court, however, did not conclude that it was improper for the same IJ to preside over both
 hearings. If anything, the court suggested that such conduct was proper. *See id.* at 1242 (noting that
 “the IJ properly presided over both proceedings”).

1 **III. Due process violations**

2 In addition to seeking release from custody or a bond hearing, Coombs also alleges several due
 3 process violations during the bond hearing. Coombs, however, filed the present Petition before he
 4 appealed the IJ's denial of bond to the BIA. Specifically, Coombs filed the Petition on September 21,
 5 2011, and he filed the appeal with the BIA on October 27, 2011. While the Petition was pending, the
 6 BIA dismissed Coombs' appeal as untimely. (Pet.'s Traverse, Ex. F.) The BIA also noted that the IJ's
 7 decision was now "final." (*Id.*) Nonetheless, despite the fact that the administrative proceedings are
 8 now "final," the Court is required to dismiss Coombs' Petition without prejudice pursuant to the Ninth
 9 Circuit's recent decision in *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011).

10 In *Leonardo*, similar to this case, the petitioner alleged that his prolonged detention was
 11 unlawful. *Id.* at 1159. While his habeas petition was pending, the Ninth Circuit decided *Casas-*
 12 *Castrillon* and *Prieto-Romero*. *Id.* In light of those decisions, the district court ordered the
 13 government to afford Leonardo a *Casas-Castrillon* hearing. *Id.* The government complied, and the
 14 IJ denied bond. *Id.* Rather than appeal the IJ's adverse bond determination to the BIA, Leonardo filed
 15 a motion for review of the IJ's decision in his pending habeas case, arguing that the hearing failed to
 16 satisfy due process or conform to the district court's previous order. *Id.* The district court denied the
 17 petition and Leonardo appealed to the Ninth Circuit. *Id.* Ultimately, Leonardo also appealed the IJ's
 18 adverse determination to the BIA. *Id.* The Ninth Circuit remanded with instructions for the district
 19 court to dismiss Leonardo's petition without prejudice. The court held that the proper procedure for
 20 challenging a *Casas-Castrillon* bond hearing was as follows:

21 Once an alien has received a *Casas-Castrillon* bond hearing before an immigration
 22 judge (IJ), he may appeal the IJ's decision to the Board of Immigration Appeals (BIA).
 23 If the alien is dissatisfied with the BIA's decision, he may then file a habeas petition
 in the district court, challenging his continued detention. The district court's decision
 on the habeas petition may be appealed to this court.

24 *Id.* at 1159. "When a petitioner does not exhaust administrative remedies, a district court ordinarily
 25 should either dismiss the petition without prejudice or stay the proceedings until the petitioner has
 26 exhausted remedies, unless exhaustion is excused." *Id.* at 1160 (citations omitted).

27 In this case, as in *Leonardo*, Coombs failed to exhaust administrative remedies before asking
 28 this Court to review the alleged due process violations during the bond hearing. Moreover, just like

1 in *Leonardo*, Coombs has not asked for a stay, nor has he demonstrated grounds for excusing the
2 exhaustion requirement. *See id.* at 1160-61. Accordingly, even though the administrative proceedings
3 are now “final,” the Court is required to dismiss Coombs’ Petition without prejudice. *See id.* at 1161.

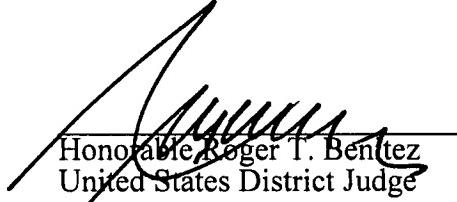
4 **CONCLUSION**

5 To the extent Coombs seeks release from custody or a bond hearing, the Court **DISMISSES**
6 that part of the Petition **AS MOOT** because the bond hearing provided Coombs with the sole remedy
7 to which he was entitled. On the other hand, to the extent Coombs alleges due process violations
8 during his bond hearing, the Court **DISMISSES AS MOOT** that part of the Petition for failure to
9 exhaust administrative remedies. To the extent Coombs has now exhausted his administrative
10 remedies, he may file a new habeas action. *See Leonardo*, 646 F.3d at 1161.

11 Coombs’ motion to appoint counsel is **DENIED AS MOOT**. [Doc. No. 5.]

12 **IT IS SO ORDERED.**

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14 Date: May 24, 2012



15 Honorable Roger T. Benitez
United States District Judge

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